



DEPARTMENT OF THE TREASURY

Privacy Act of 1974; Department of the Treasury, Internal Revenue Service-

Treasury/IRS 10.008, Certified Professional Employer Organizations System of Records

AGENCY: Treasury, Internal Revenue Service (IRS)

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a the Department of the Treasury (“Treasury” or the “Department”) proposes to establish a new Treasury system of records titled, “Department of the Treasury, Internal Revenue Service- Treasury/IRS 10.008, Certified Professional Employer Organizations System of Records.”

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This new system will be effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments should be sent to Office of Governmental Liaison, Disclosure and Safeguards, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, Attention: New Privacy Act Systems of Records. Comments will be available for inspection and copying at the above address by appointment only. Write to the above address or call (202) 317-4505 (not a toll free number) to schedule an appointment for inspection and/or copying. All comments received, including attachments and other supporting disclosure will be posted without change at

www.regulations.gov. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Nicole L. Young, Supervisory Financial Administrator and Program Specialist, SBSE, (240) 613-6407 (not a toll-free number). For privacy issues please contact: David Silverman, Management and Program Analyst, Privacy, Governmental Liaison and Disclosure, at 1111 Constitution Ave NW, Washington, DC 20224, (202) 317-6452 (not a toll free number).

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury (Treasury) Internal Revenue Service (IRS) proposes to establish a new Treasury system of records titled, “Department of the Treasury, Internal Revenue Service- Treasury/IRS 10.008, Certified Professional Employer Organizations System of Records.”

The proposed system will allow the IRS to implement requirements pursuant to Title II (Section 206) of the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), Public Law 113-295, to administer a program to certify professional employer organizations by conducting suitability checks of key individuals involved to protect the public. The ABLE Act provides certain tax benefits for certified professional employer organizations giving them statutory authority to collect and remit federal employment taxes under the certified professional employer organization’s (CPEO’s) employer identification number for wages the CPEO pays to individuals covered by a service contract. Individuals will have the opportunity to seek administrative review of

issues related to the denial or revocation of certification.

Professional employer organizations, including their owner(s), responsible individual(s), and authorized representative(s), will be subject to suitability checks, which may include background, fingerprint, and tax compliance checks. These organizations must also secure a bond and provide independent financial reviews on a periodic basis. Additionally, any changes that materially affect the information previously provided in the certification process must be provided to the IRS in a timely manner.

This proposed system will contain information about individuals pertaining to the administration of certifying professional employer organizations and ensuring their compliance with 26 U.S.C. 3511 and 7705. The IRS will collect information about responsible individuals, including background and tax compliance checks to protect the public and ensure the integrity of the certification process. Disclosure of information contained in these systems of records to unauthorized persons could result in a violation of privacy, have adverse financial consequences to individuals, and may bring personal and/or familial embarrassment to an individual.

The IRS has established physical, system, and procedural safeguards to minimize the risk of unauthorized access. Only persons authorized by law will have access to these records. Physical safeguards will be provided in accordance with TD P 71-10, Department of the Treasury Security Manual, and access controls are not less than those published in IRM 10.2, Physical Security Program. Access will be permitted on a need to know basis and based on the routine uses in the system. The IRS will distribute security and privacy guidelines and training to its personnel and conduct random checks on the

adequacy of security and privacy features.

Below is the description of the Treasury/IRS 10.008, Certified Professional Employer Organizations System of Records.

In accordance with 5 U.S.C. 552a(r), Treasury has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records: IRS 10.008

System name:

Department of the Treasury, Treasury/IRS 10.008, Certified Professional Employer Organizations System of Records.

System location:

Records are maintained at the IRS Office of the Commissioner, Small Business/Self Employed Division (SB/SE), National Office, Area Offices, Local Offices, Service Campuses, and Computing Centers. (See IRS Appendix A in the Federal Register Volume 80, Number 173, Tuesday, September 8, 2015 for addresses of IRS offices at pages 54063-54143.)

Categories of individuals covered by the system:

These records include information about: (1) responsible individuals and other individuals who are connected or related to an organization that applies for professional employer organization certification and records of approval, denial, suspension, or revocation of certification; (2) individual contractors involved with the Certified Professional Employer Organizations (CPEO) program; (3) individuals who communicate with the IRS regarding the certified professional employer organization

program or about any specific professional employer organization, or about any responsible individual or other individual connected or related to any applicant organization (pursuant to definitions in 301.7705–1T); and (4) third party witnesses who may be interviewed as part of the suitability check.

Categories of records in the system:

These records include information about responsible individuals and other individuals connected or related to organizations that apply for Professional Employer Organization (PEO) certification, including information related to approval, denial, suspension, or revocation of certification, records relating to applications for certification or annual verification; records pertaining to IRS investigation and evaluation of eligibility for certification; records related to suitability checks, including but not limited to, background, fingerprint, and tax compliance checks (which may include credit reports, reports of misconduct, law enforcement records and other information from investigations into suitability for certification); and records pertaining to received communications. Records will contain individuals' names, Social Security numbers, employer identification numbers, addresses, phone numbers, alternate names, points of contact, experience, and personal attestations.

Authority for maintenance of the system:

26 U.S.C. 3511 and 7705; 5 U.S.C. 301.

Purpose(s):

The purpose of this system is to administer records pertaining to the certification of professional employer organizations pursuant to Title II (Section 206) of the Stephen

Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), Public Law 113-295. This system of records includes administrative, investigative, and tax records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Disclosure of return and return information may be made only as provided by 26 U.S.C. 6103. All other records may be disclosed as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records, and no privilege is asserted:

- (1) To the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) the IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.
- (2) In a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) the IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding and the IRS or DOJ determines that the information is relevant and necessary to the proceeding. Information may be disclosed to the adjudicative body to resolve issues of relevancy,

necessity, or privilege pertaining to the information.

(3) To an appropriate federal, state, local, tribal, or foreign agency, or other public authority, responsible for implementing or enforcing, or for investigating or prosecuting the violation of, a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(4) to third parties during the course of an investigation, which may include a suitability check, to the extent necessary to obtain information pertinent to the investigation.

(5) To the news media as described in the IRS Policy Statement 11-94 (formerly P-1-183), News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(6) To a contractor, including an expert witness or a consultant, hired by the IRS, to the extent necessary for the performance of a contract.

(7) To the public the names and addresses of responsible individuals and other individuals connected or related to organizations that have been certified, suspended, or revoked. The Service may also disclose the effective date of certification or revocation, the type of discipline, and the effective date and duration of suspension.

(8) To appropriate agencies, entities, and persons when: (a) the IRS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the IRS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity

theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the IRS or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IRS efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records in this system are stored in a secure electronic system or on paper in secure facilities in a locked drawer behind a locked door.

Retrievability:

Records may be retrieved by individual or organization name, Taxpayer Identification Number (Social Security Number, Employer Identification Number, or other number assigned by the IRS), application number (number assigned upon submission of an application), or certification approval number. Records pertaining to contractors may be retrieved by contractor name or Taxpayer Identification Number, or by contract number. Records pertaining to communications with individuals regarding the certified professional employer organization program or a specific organization may be retrieved by the name of the individual, the name of a professional employer organization, or name of a responsible individual or other individual connected or related to that organization, or other identifying information of a professional employer organization identified in the communication, such as Taxpayer Identification Number

and certification number. Records may also be retrieved by IRS employee assigned to the case, project, or determination.

Safeguards:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances.

Retention and disposal:

Records are generally maintained for six years in accordance with IRM 1.15, Records and Information Management, Document 12829, General Records Schedules, and Document 12990, Records Control Schedules. There may be exceptions if records need to be retained longer at the request of a court if the records are pertinent to litigation or at the request of Congress for congressional oversight.

System Manager and address:

Commissioner, SB/SE, 1111 Constitution Avenue NW, Washington, DC 20224.

Notification procedure:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in “Record Access Procedures” below.

Individuals must first verify their identity by providing their full name, current address and date and place of birth. Individuals must sign their request, and their signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition individuals should provide the following:

- An explanation of why he or she believes the IRS would have information about them;
- Specify when he or she believes the records would have been created;
- Provide any other information that will help the IRS or FOIA staff determine which IRS office may have responsive records; and
- If the request is seeking records pertaining to another living individual, he or she must include a statement from that individual certifying his/her agreement for the requestor to access his/her records.

Without this bulleted information, the IRS may not be able to conduct an effective search, and the request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Record access procedures:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to Internal Revenue Service Centralized Processing Unit - Stop 93A, Post Office Box 621506, Atlanta, GA 30362.

Contesting record procedures:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records. See "Record Access Procedures" above for records that are not tax records.

Record source categories:

Records are obtained from tax records of applicant organizations, responsible individuals, and other individuals connected or related to the applicant organization; public information sources; third parties including individuals, city and state governments, other federal agencies, applicant organization clients, licensing and other professional organizations. Employee information is obtained from IRS personnel records.

Exemptions claimed for the system:

None.

Dated: June 16, 2016.

Helen Goff Foster,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

Billing Code: 4810-33-P

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